

EXHIBIT A

LEASE AGREEMENT PART 1

**LEASE AGREEMENT**

**Between**

**NC FAYETTEVILLE SKIBO, LLC,**  
a North Carolina limited liability company

**Landlord**

**and**

**BED BATH & BEYOND INC.,**  
a New York corporation,

**d/b/a BUY BUY BABY**

**Tenant**

**FREEDOM TOWN CENTER**  
**at the corner of Skibo Road and Cliffdale Road**  
**Fayetteville, NC**

**Dated as of: October 31, 2016**

**\* \* \* \* \***

The mailing, delivery or negotiation of this Lease shall not be deemed an offer to enter into any transaction or to enter into any relationship, whether on the terms contained herein or on any other terms. This Lease shall not be binding nor shall either party have any obligations or liabilities or any rights with respect thereto, or with respect to the premises, unless and until both parties have executed and delivered this Lease. Until such execution and delivery of this Lease, either party may terminate all negotiation and discussion of the subject matter hereof, without causes and for any reason, without recourse or liability.

**\* \* \* \* \***

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**EXHIBITS**

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Exhibit B	Site Plan
Exhibit C	Form of Rent Commencement and Expiration Date Agreement
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**LEASE AGREEMENT**

THIS LEASE AGREEMENT ("*Lease*") is entered into as of October 31, 2016 by and between NC FAYETTEVILLE SKIBO, LLC, a North Carolina limited liability company, having an office at 550 South Main Street, Suite 300, Greenville, South Carolina 29601 ("*Landlord*"), and BED BATH & BEYOND INC., a New York corporation, d/b/a Buy Buy Baby, having an office at 650 Liberty Avenue, Union, New Jersey 07083 ("*Tenant*").

**WITNESSETH:**

**ARTICLE 1  
BASIC TERMS AND DEFINITIONS**

Section 1.1 Basic Terms and Definitions. The following terms shall have the meanings set forth in this Section 1.1 except as otherwise expressly provided herein.

1.1.1 Additional Rent: Any monies which Tenant is required to pay to Landlord under the terms and conditions of this Lease, other than Fixed Rent.

1.1.2 Affiliate: A corporation, partnership, limited liability company, person or other entity which is controlling, controlled by, or under common control with, Landlord or Tenant, as the case may be. As used herein, "*control*" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract, or otherwise.

1.1.3 Alternate Rent: Payment of Percentage Rent (except that for purposes of this paragraph, the Sales Break Point shall be deemed to be One (\$1.00) Dollar), not to exceed fifty percent (50%) of the amount of Fixed Rent which otherwise would have been payable during such period (the "*Cap*"). Alternate Rent shall be payable within thirty (30) days after the end of the calendar month to which it pertains, and shall be payable in lieu of Fixed Rent and Percentage Rent normally payable under Article 4 below. If the Alternate Rent for a calendar month does not exceed the Cap, such payment shall be accompanied by a statement prepared by an officer of Tenant setting forth the amount of "Gross Sales" (hereinafter defined in Subsection 4.4.2) achieved during, and the amount of Alternate Rent payable for, such month. Notwithstanding anything in this Lease to the contrary, the payment of Alternate Rent by Tenant when permitted under the terms of this Lease (in lieu of the payment of Fixed Rent and Percentage Rent), shall not alleviate Tenant's obligation to pay Additional Rent.

1.1.4 Common Areas: All areas in the Greater Shopping Center which are, from time to time, available for the joint use and benefit of Tenant and other tenants and occupants of the Greater Shopping Center, and their respective employees, agents, subtenants, concessionaires, licensees, customers and other invitees, including, but not limited to, any and all parking areas, parking spaces, driveways, truck serviceways, passageways, sidewalks, entrances, exits, lighting facilities, courts, landscaped areas, retention or detention areas, and utility lines serving such common areas and facilities.

1.1.5 Common Areas Charges: As defined in Section 5.1 hereof.

1.1.6 Delivery Date: As defined in Section 2.3 hereof.

1.1.7 Effective Date: The date hereof.

1.1.8 Event of Default: As defined in Section 16.1 hereof.

1.1.9 Excused Periods: Periods during which Tenant's failure to conduct the operations of its business or any other business: (x) resulted from alterations or renovations being performed in and to the Premises, (y) was caused by damage or destruction, eminent domain proceedings or actions, or *Force Majeure*, or (z) was caused by any act or omission of Landlord, or its employees, agents, or contractors.



1 1.1.10 Exhibits. The exhibits listed in the Table of Contents annexed to this  
2 Lease have been agreed to by the parties and attached hereto, it being the intention of the  
3 parties that they shall become a binding part of this Lease as if fully set forth herein.

4 1.1.11 Fixed Rent: The following amounts for the periods indicated  
5 (subject to adjustment pursuant to Section 3.4 hereof):

6 (a) For the period commencing on the Rent Commencement Date  
7 and ending on the first January 31 occurring after the fifth (5th) anniversary of the Rent  
8 Commencement Date, at the rate of One Hundred Sixty-Four Thousand Six Hundred  
9 Forty-Six and 00/100 Dollars (\$164,646.00) per year based on Nine and 00/100 Dollars  
10 (\$9.00) per square foot of Floor Area in the Premises;

11 (b) For the period commencing on the first February 1 occurring  
12 after the fifth (5th) anniversary of the Rent Commencement Date and ending on the last  
13 day of the "Initial Term" (defined in Subsection 1.1.43 below), at the rate of One  
14 Hundred Eighty-One Thousand One Hundred Ten and 60/100 Dollars (\$181,110.60) per  
15 year based on Nine and 90/100 Dollars (\$9.90) per square foot of Floor Area in the  
16 Premises;

17 (c) In the event Tenant exercises the first Renewal Option, for  
18 the first five (5) year Renewal Period, at the rate of One Hundred Ninety-Nine Thousand  
19 Two Hundred Twenty-One and 66/100 Dollars (\$199,221.66) per year based on Ten and  
20 89/100 Dollars (\$10.89) per square foot of Floor Area in the Premises;

21 (d) In the event Tenant exercises the second Renewal Option, for  
22 the second five (5) year Renewal Period, at the rate of Two Hundred Nineteen Thousand  
23 One Hundred Sixty-Two and 12/100 Dollars (\$219,162.12) per year based on Eleven and  
24 98/100 Dollars (\$11.98) per square foot of Floor Area in the Premises; and

25 (e) In the event Tenant exercises the third Renewal Option, for  
26 the third five (5) year Renewal Period, at the rate of Two Hundred Forty-One Thousand  
27 One Hundred Fourteen and 92/100 Dollars (\$241,114.92) per year based on Thirteen and  
28 18/100 Dollars (\$13.18) per square foot of Floor Area in the Premises; and

29 (f) In the event Tenant exercises the fourth Renewal Option, for  
30 the fourth five (5) year Renewal Period, at the rate of Two Hundred Sixty-Five Thousand  
31 Two Hundred Sixty-Three and 00/100 Dollars (\$265,263.00) per year based on Fourteen  
32 and 50/100 Dollars (\$14.50) per square foot of Floor Area in the Premises; and

33 (g) In the event Tenant exercises the fifth Renewal Option, for  
34 the fifth five (5) year Renewal Period, at the rate of Two Hundred Ninety-One Thousand  
35 Seven Hundred Eighty-Nine and 30/100 Dollars (\$291,789.30) per year based on Fifteen  
36 and 95/100 Dollars (\$15.95) per square foot of Floor Area in the Premises.

37 1.1.12 Floor Area: The actual number of square feet of space contained on  
38 all floors within any building area in the Greater Shopping Center (including the  
39 Premises) and, with respect to exterior areas, including all exterior areas leased to or  
40 exclusively used by one or more tenants (other than exterior loading dock areas, trash  
41 compactor areas, and trash container areas). All measurements pursuant to this Section  
42 shall be from the exterior of outside walls or store front and/or to the centerline of any  
43 common walls, but in no event shall Floor Area within either the Premises or the  
44 remainder of the Greater Shopping Center include any non-selling or storage space areas  
45 within any mezzanine, lower floor, second floor or, except as set forth above, any exterior  
46 areas.

47 1.1.13 Force Majeure: As defined in Section 23.4 hereof.



1.1.13A. Greater Shopping Center: The Greater Shopping Center is located at the SE corner of Skibo Road and Cliffdale Road, in Fayetteville, North Carolina and commonly known as Freedom Town Center. The Greater Shopping Center is comprised of: (i) the Section I Shopping Center, (ii) the Section II Shopping Center, (iii) the Shopping Center, and (iv) the Road Parcel, as more particularly described on Exhibit A and shown on Exhibit B. The Greater Shopping Center, when constructed, shall contain approximately three hundred eighty-two (382,000) square feet of Floor Area. Landlord shall not change the name of the Greater Shopping Center or the Shopping Center without giving at least ninety (90) days prior notice to Tenant, and Landlord shall not include the name of any tenant (other than Tenant) in the name of the Greater Shopping Center or Shopping Center.

1.1.14 Ground Lessor: The landlord under any existing or future ground or underlying leases encumbering or affecting all or any part of the Shopping Center.

1.1.15 Intentionally Omitted.

1.1.16 Hazardous Substances: As defined in Subsection 12.4.1 hereof.

1.1.17 Inducement Tenants: As defined in Subsection 2.3.1 hereof.

1.1.18 Landlord: As defined in the preamble and Section 23.11 hereof.

1.1.19 Landlord's Mailing Address: 550 South Main Street, Suite 300, Greenville, South Carolina 29601, or such other place and/or to the attention of such other person as Landlord may notify Tenant from time to time by notice given in accordance with the provisions of Article 18 hereof. If the "Landlord" consists of more than one person, then notices given to the entity listed in Landlord's Mailing Address will be deemed to have been given automatically to all of the parties which constitute Landlord, and Tenant shall be entitled to rely exclusively on any notice sent by said entity.

1.1.20 Landlord's Work: As defined in Section 3.1 hereof.

1.1.21 Lease Interest Rate: The then effective prime rate as published from time to time in the "Money Rates" section of *The Wall Street Journal* (or any successor publication thereto) plus two (2%) percent.

1.1.22 Legal Requirements: All laws, statutes, codes, acts, ordinances, judgments, decrees, authorizations, directions and requirements of, and agreements with, all governmental departments, commissions, boards, courts, authorities, agencies, officials and officers, which now or at any time hereafter may be applicable to the Premises, the Greater Shopping Center, or any part(s) thereof, including, without limitation, the Americans with Disabilities Act and federal, state, and local governmental interpretations thereof.

1.1.23 Mortgagee: Any state or federally regulated: bank, savings and loan association, insurance company, pension fund, credit union, real estate investment trust, or other institutional lender, which is not an Affiliate of Landlord, and which holds a mortgage on the Shopping Center or is the beneficiary under a deed of trust encumbering the Shopping Center.

1.1.24 Intentionally Omitted.

1.1.25 Percentage Multiple: Three (3%) percent.

1.1.26 Percentage Rent: As defined in Section 4.4 hereof.

1.1.27 Permitted Use: The sale (including the incidental rental), at retail of infant, juvenile and children's goods and services, including, but not limited to, a variety (in Tenant's sole discretion as to the mix and proportions) of the following: infant's, juvenile's and children's furniture, furnishings, beds (including, without limitation, mattresses and bedding), changing tables, gliders and rockers (including coordinating ottomans), high chairs, lamps, walkers, play yards, swings, car seats, booster seats, carriages, strollers, cradles, playpens, cribs, toy or clothing chests, stuffed animals, games and toys, bedding accessories, maternity clothing and related items, clothing and accessories for infants, juveniles or children, apparel, layettes, shoes, toys, bottles, food or formula for infants, juveniles and children, feeding items, safety items, nursing items, health and beauty care items, food and beverages, drug remedies, diapers, wipes, bathroom and personal care devices and items, indoor or outdoor play and recreational equipment, pacifiers, baby safety items, diaper bags, nursing and bathing items, children's books, pregnancy books, magazines, computer software, audio and video cassettes or tapes, picture frames, portrait studio items and services, party supplies, invitations, greeting cards, gift items, arts and crafts, stationery, teachers' and parents' resources, other educational and multi-media children's items, hair cutting services, fitness center development and learning services, and any and all other items sold or services (including, without limitation, the operation of Demonstration Areas, defined below) provided from time to time in any store owned or operated by Tenant or its Affiliate(s) (the aforementioned items are hereinafter collectively referred to as the "**Permitted Items**"); and for any other lawful retail use not specifically prohibited by the provisions of Subsection 13.1.1 below. In addition, Tenant shall be permitted to use portions of the Premises for storage and office uses incidental to the Permitted Use. As used herein, "**Demonstration Areas**" shall mean an area or areas located within the Premises, for the purpose of demonstrating to Tenant's customers and invitees various products (including, without limitation, food and cooking products), which Demonstration Areas shall be at all times be operated in full compliance with all Legal Requirements.

1.1.28 Premises: Being the area cross-hatched on Exhibit B hereto, having dimensions as shown on Exhibit B and containing approximately: (i) eighteen thousand two hundred ninety-four (18,294) square feet of Floor Area, subject to adjustment in accordance with the provisions of Section 3.4 below. In no event shall any space used for fire pump facilities or electrical switch gear result in any charge to Tenant by way of Fixed Rent or any Additional Rent, nor shall such space be included in the determination of Tenant's Pro Rata Share.

1.1.29 Renewal Option: As defined in Subsection 2.2.2 hereof.

1.1.30 Renewal Period(s): Five (5) successive periods of five (5) years each, as provided in Subsection 2.2.2 hereof.

1.1.31 Rent: Fixed Rent and/or Additional Rent.

1.1.32 Rent Commencement Date: As defined in Section 2.2 hereof.

1.1.33 Sales Break Point: As defined in Subsection 4.4.1 hereof.

1.1.34 Shopping Center: That portion of the Greater Shopping Center more particularly described in Exhibit A-1 and designated as the "Section III Shopping Center" on Exhibit B (which Shopping Center, when constructed, shall contain approximately one hundred fifty-nine thousand one hundred seventeen (159,117) square feet of Floor Area).

1.1.35 Substantially Completed or Substantial Completion: The completion of specified work at the Greater Shopping Center (including, without limitation, as applicable, Landlord's Work) to the extent that only "Punch List Items" of such work (defined in Subsection 3.3.3 below) shall not be completed.

1 1.1.36 Taxes: As defined in Subsection 4.3.3 hereof.

2 1.1.37 Tenant: As defined in the preamble hereof.

3 1.1.38 Tenant's Mailing Address: c/o Buy Buy Baby, Inc., 650 Liberty  
4 Avenue, Union, New Jersey 07083, Attn: Warren Eisenberg, or such other place and/or to  
5 the attention of such other person as Tenant may notify Landlord from time to time by  
6 notice given in accordance with the provisions of Article 18 hereof.

7 1.1.39 Tenant's Permits: As defined in Subsection 2.3.1(b) hereof.

8 1.1.40 Tenant's Property: All of Tenant's personal property, including,  
9 without limitation, phone and alarm systems, satellite antennae, shelving, computers,  
10 furniture, cash registers and customer service counters, specialty lighting, track lighting,  
11 millwork, conveyor systems, storage racks and signage and any and all other personal  
12 property of Tenant which is capable of being removed from the Premises without  
13 material damage thereto, but which shall not include electrical systems, heating,  
14 ventilation and air conditioning systems, and other mechanical systems, flooring, carpet,  
15 elevators, standard lighting and wiring installed within the walls of the Premises.

16 1.1.41 Tenant's Pro Rata Share: A fraction whose numerator is the Floor  
17 Area of the Premises and whose denominator is the Floor Area of the Shopping Center as  
18 may be re-determined any time a building (and/or Floor Area) is added to or removed  
19 from the Shopping Center, but in no event shall Tenant's Pro Rata Share be greater than  
20 Thirteen (13%) percent. Floor Area shall be deemed added to or removed from the  
21 Shopping Center on the earlier of (i) the date upon which such Floor Area is Substantially  
22 Completed, or (ii) at such time as an assessment for Taxes is made or removed, as the  
23 case may be, with respect to such Floor Area. Within thirty (30) days following written  
24 request from Tenant, Landlord shall certify to Tenant in writing as to the then Floor Area  
25 of the Shopping Center.

26 1.1.42 Tenant's Work: As defined in Section 3.1 hereof.

27 1.1.43 Term: A period (the "**Initial Term**") of approximately ten (10) years  
28 beginning on the Rent Commencement Date and expiring at midnight on the last day of  
29 January following the tenth (10th) anniversary of the Rent Commencement Date, unless  
30 the Rent Commencement Date is February 1, in which event the Expiration Date shall be  
31 the day before the tenth (10th) anniversary of the Rent Commencement Date. As used  
32 herein: (i) "**Term**" shall refer to the Initial Term, as the same may be extended by any  
33 Renewal Period exercised pursuant to Subsection 2.2.2 below; and (ii) "**Expiration**  
34 **Date**" shall mean the date on which the Term expires.

35 ARTICLE 2  
36 LEASE OF PREMISES; LEASE TERM; DELIVERY DATE

37 Section 2.1 Lease of Premises. Landlord hereby leases to Tenant, and Tenant  
38 hereby leases from Landlord, the Premises together with any and all rights, benefits,  
39 privileges and easements, now or hereafter appurtenant to either or each of the Premises,  
40 the Shopping Center, and the Greater Shopping Center arising out of any public or  
41 private grant or authority, including, without limitation, the non-exclusive right and  
42 easement to use the Common Areas in common with other tenants and occupants of the  
43 Greater Shopping Center. Landlord acknowledges that following the Effective Date,  
44 Tenant intends to sublease the Premises (the "**Sublease**") to its wholly owned subsidiary,  
45 Buy Buy Baby, Inc., a Delaware corporation ("**Buy Buy Baby**"), and Landlord agrees to  
46 accept performance of Tenant's obligations hereunder by Buy Buy Baby.  
47 Notwithstanding the immediately preceding sentence, in no event shall Tenant be  
48 released from its obligations arising under this Lease as a result of the Sublease to Buy  
49 Buy Baby.

1           Section 2.2   Term.

2           2.2.1 Initial Term. Subject to the provisions of this Article 2, the Term of  
3 this Lease shall begin on the sixtieth (60th) day following the Delivery Date (the "**Rent**  
4 **Commencement Date**"). The Term shall expire on the Expiration Date, unless earlier  
5 terminated as herein provided. When the Rent Commencement Date has been  
6 determined, as provided in this Section, Landlord and Tenant shall execute, acknowledge  
7 and deliver, each to the other, a written statement in the form attached hereto as Exhibit C  
8 specifying the Rent Commencement Date, and Landlord shall deliver to Tenant a  
9 completed and signed IRS Form W-9 contemporaneously therewith; the delivery of the  
10 Form W-9 shall be a condition precedent to the payment of Rent.

11           2.2.2 Renewal Options. Provided that on the date of exercise of each  
12 applicable Renewal Option there exists no Event of Default, Tenant shall have the right  
13 and option (hereinafter a "**Renewal Option**") to extend the Initial Term from the date on  
14 which it would otherwise expire for five (5) successive renewal periods of five (5) years  
15 each (individually, a "**Renewal Period**", and collectively, the "**Renewal Periods**") upon  
16 the same terms and conditions as are herein set forth. Each Renewal Option shall be  
17 exercisable by notice given to Landlord at least one hundred fifty (150) days prior to the  
18 commencement of the applicable Renewal Period(s); provided, however, that the Term  
19 of this Lease shall not expire unless and until Tenant fails to exercise a Renewal Option  
20 within fifteen (15) days after receiving notice from Landlord that the Renewal Option in  
21 question has not been exercised (Landlord's notice shall not be given prior to the 150<sup>th</sup>  
22 day prior to the Expiration Date), or unless and until Tenant gives notice to Landlord that  
23 it will not be exercising any remaining Renewal Options. If Landlord fails to give Tenant  
24 such notice prior to the Expiration Date, and Tenant occupies the Premises after the  
25 Expiration Date, then Tenant shall remain in possession subject to the provisions of this  
26 Lease but without the application of Article 20 hereof. If Landlord then gives Tenant  
27 such notice and Tenant exercises its Renewal Option, then the effective date of such  
28 exercise shall be retroactive to the Expiration Date.

29           Section 2.3   Delivery Date.

30           2.3.1 Definition. Subject to Landlord's delivery to Tenant of the Delivery  
31 Date Notice in accordance with the provisions of Subsection 2.3.2 below and Landlord's  
32 timely compliance therewith, Landlord shall be deemed to have delivered possession of  
33 the Premises to Tenant at 8:00 a.m. on the date (the "**Delivery Date**") following the day  
34 on which all of the following conditions (the "**Delivery Date Conditions**") shall have  
35 occurred and Tenant shall have received from Landlord the Delivery Date Certification in  
36 accordance with the provisions of Subsection 2.3.3 below, which shall constitute  
37 Landlord's written certification that all of the following shall have occurred:

38                   (a) Actual possession of the Premises shall have been delivered  
39 to Tenant water-tight, free of Hazardous Substances, in a good, structurally sound  
40 condition, with all of Landlord's Work Substantially Completed, which Substantial  
41 Completion shall be evidenced by a written certification by Landlord's architect to  
42 Tenant;

43                   (b) Landlord shall have obtained (and delivered copies thereof to  
44 Tenant, upon request) all permits and approvals required from all applicable  
45 governmental authorities to enable Tenant to occupy and use the Premises for the conduct  
46 of its business in the Premises (exclusive of any permits, licenses and approvals which  
47 Tenant may be required to obtain in order to open and operate its specific business and  
48 not a general retail business (collectively, "**Tenant's Permits**")), which permits and  
49 approvals shall include, without limitation, zoning and building code approvals,  
50 environmental requirements, and a permanent certificate of occupancy for the Premises  
51 (unless a permanent certificate of occupancy for the Premises cannot be obtained solely



as a result of the failure to complete Tenant's Work in the manner required hereunder or cannot be obtained until Punch List Items (as defined in Section 3.3.3 herein) have been completed, in which event: (1) the delivery of a permanent certificate of occupancy for the Premises shall not be a condition to the occurrence of the Delivery Date, (2) the obtaining of a temporary certificate of occupancy shall be a condition to the occurrence of the Delivery Date, and (3) Landlord shall obtain the permanent certificate of occupancy promptly following the correction or completion of Tenant's Work and/or the Punch List Items, if applicable);

(c) The Road Parcel, the Common Areas within the Shopping Center and the Section I Shopping Center (and all of the improvements to said Common Areas shown on Exhibit B), and the Section III Inline Space (hereinafter defined in Exhibit M) shall have been Substantially Completed and operational, and all off-site improvements (including, without limitation, street, and storm drainage improvements) required for the Shopping Center to open for business and for Tenant to receive a permanent certificate of occupancy shall have been Substantially Completed; and Landlord, at its sole cost and expense, shall have obtained (and delivered copies thereof to Tenant, upon request) all permits and approvals required from applicable governmental authorities to enable the Common Areas within the Shopping Center and the Section I Shopping Center and all of the improvements thereto to be developed, operated, and used for the purposes herein contemplated, which permits and approvals shall include, without limitation, to the extent applicable, zoning, building code, environmental requirements, curb cut and site plan approvals, all permits pertaining to pylon signage, if any, (and Tenant's panel(s) thereon), construction, and development and use permits;

(d) The representations and warranties of Landlord set forth in subparagraphs (a) through (i) of Section 12.3 below shall then be true and in effect;

(e) Leases or other occupancy agreements shall have been entered into with (i) five (5) of the following tenants or occupants (hereinafter collectively referred to as the "**Named Inducement Tenants**") on the following terms, for occupancy of the premises designated for them on Exhibit B; and (ii) such leases shall not be cancelable by any of the Named Inducement Tenants, except for failure of Landlord to complete the Greater Shopping Center, for injury to or loss of the premises thereby demised because of fire or other casualty, or for a taking or for other reasons similar to those for which this Lease is cancelable by Tenant:

Inducement Tenants	Minimum Square-foot Gross Floor Area	Minimum Term
Field & Stream	50,000	10 Years
Hobby Lobby	60,000	10 Years
Dick's Sporting Goods	50,000	10 Years
HomeGoods	21,000	10 Years
DSW	16,000	10 Years
Petco	12,500	10 Years
Burkes	21,000	10 Years

(f) Landlord shall have delivered to Tenant, in recordable form: (i) a subordination, non-disturbance and attornment agreement substantially in the form attached hereto as Exhibit G executed by each holder of any mortgage or deed of trust encumbering or affecting the Shopping Center or any portion thereof (it being understood and agreed that this Subsection 2.3.1(f) is not intended to extend the date by which Landlord is to deliver to Tenant any document(s) required pursuant to Section 17.3

1 hereof), and (ii) a fee owner recognition agreement in the form and content described in  
2 clause (b) of Section 17.1 hereof executed by any existing Ground Lessor; and

3 (g) The OEA (hereinafter defined in Section 12.5) is (x) fully  
4 executed and delivered and recorded in Clerk's Office of the Cumberland County, North  
5 Carolina, and (y) superior to all mortgages, deeds of trust and other liens affecting the  
6 Greater Shopping Center, including the Shopping Center.

7 2.3.2 Delivery Date.

8 (a) Landlord shall give Tenant at least one hundred twenty (120)  
9 days prior notice of the Delivery Date, using the form of Delivery Date Notice attached  
10 hereto as Exhibit I (the "**Delivery Date Notice**"). Landlord's delivery of the Delivery  
11 Date Notice shall be a condition precedent to the Rent Commencement Date.  
12 Notwithstanding any provision of this Lease to the contrary, in no event shall the  
13 Delivery Date be deemed to occur prior to the Delivery Date established in the Delivery  
14 Date Notice. No event of Force Majeure occurring prior to the giving of the Delivery  
15 Date Notice shall serve to delay the Delivery Date thereby established.

16 (b) Landlord acknowledges that if it shall fail to satisfy all of the  
17 Delivery Date Conditions by the Delivery Date as established in the Delivery Date  
18 Notice, Tenant will sustain substantial, additional costs and expenses, including, without  
19 limitation, storage costs for fixtures, equipment, and inventory, employee costs during the  
20 waiting period, and additional advertising and promotional costs, the exact amount of  
21 which would be impracticable or extremely difficult to ascertain. If the Delivery Date  
22 does not occur by the date established therefor in the Delivery Date Notice, then, in  
23 addition to any other remedies available to Tenant under this Lease, Tenant shall be  
24 entitled to a credit against the initial installment(s) of Rent hereunder, as liquidated  
25 reimbursement (and not as a penalty) for all of the aforesaid costs incurred by Tenant, an  
26 amount equal to the sum of: (i) One Hundred Thousand Dollars (\$100,000), plus  
27 (ii) Three Thousand Dollars (\$3,000) for each day that the Delivery Date established in  
28 the Delivery Date Notice is delayed. The foregoing liquidated reimbursements represent  
29 the parties' good faith agreement as to an agreed upon amount which shall have been  
30 incurred by Tenant and which shall otherwise not be susceptible of exact ascertainment.  
31 If Landlord fails to satisfy all of the Delivery Date Conditions by the Delivery Date as  
32 established in the Delivery Date Notice, and Tenant collects liquidated reimbursements as  
33 provided in this Section 2.3.2(b), Tenant shall not be entitled to seek additional monetary  
34 damages from Landlord for the period of such delay, provided, however, Tenant reserves  
35 all other rights and remedies reserved under this Lease for such delay.

36 (c) Notwithstanding the foregoing, if the Delivery Date does not  
37 occur by the date established therefor in the Delivery Date Notice due solely to (x) delays  
38 caused by a Tenant Delay (hereinafter defined) that occurs after the Delivery Date Notice  
39 is given, or (y) Force Majeure that occurs after the Delivery Date Notice is given, then  
40 the Delivery Date shall be extended on a day for day basis for each day of such delay,  
41 provided that Landlord has notified Tenant within ten (10) days of the occurrence of such  
42 Tenant Delay or Force Majeure. As used herein, "**Tenant Delay**" shall mean those acts or  
43 omissions of Tenant or its agents, employees, or contractors which materially and  
44 adversely interfere with Landlord's capacity to perform Landlord's Work and which are  
45 not within the scope of customary and usual delays in the construction process. Within  
46 ten (10) days after the occurrence of a Tenant Delay, Landlord shall notify Tenant, in  
47 reasonable detail, of the nature and existence of such Tenant Delay and the estimated  
48 delay in completion of Landlord's Work as a result of the Tenant Delay. Landlord's  
49 failure to so notify Tenant of such Tenant Delay within the ten (10) day period shall be  
50 deemed a waiver of such Tenant Delay.



2.3.3 Delivery Date Certification. Upon the satisfaction of all of the Delivery Date Conditions, Landlord shall so certify to Tenant, using the form of Delivery Date Certification attached hereto as Exhibit J.

2.3.4 No Waiver. Neither Tenant's acceptance of physical possession of the Premises nor Tenant's opening of the Premises for business to the public prior to the Delivery Date shall: (i) be deemed a waiver by Tenant of any of the Delivery Date Conditions, or (ii) relieve Landlord of any obligation under this Lease, unless such condition or obligation is expressly waived in writing by Tenant.

Section 2.4 Unseasonable Delivery: Slack Period. If, for any reason (including, without limitation, Force Majeure), the Delivery Date occurs during the period commencing on September 1 and ending on the March 31 next following (the "**Slack Period**"), then Tenant shall have, in addition to any other remedies, the right to:

(a) accept delivery of physical possession of the Premises; or

(b) defer its acceptance of delivery of physical possession of the Premises to a later date within the Slack Period, whereupon the Delivery Date shall be deemed to have occurred on the date that Tenant actually accepts physical possession of the Premises (subject to the other provisions of this Article 2 and the continuing satisfaction of the Delivery Date Conditions); and

in either event, if the Rent Commencement Date occurs during the Slack Period, Tenant shall be entitled to pay Alternate Rent in lieu of Fixed Rent and Percentage Rent for the period commencing on the Rent Commencement Date and ending on the expiration of the Slack Period; any benefit which Tenant may realize thereby shall constitute a reimbursement to Tenant for certain pre-opening expenses incurred by Tenant in connection with this Lease. In the event that Tenant elects to defer the Delivery Date pursuant to this Section, the accrual of any per diem liquidated reimbursement under Subsection 2.3.2(b) above shall be suspended for the period of such deferment.

Section 2.5 Initial Co-Tenancy Condition.

2.5.1 As used herein, the "**Initial Co-Tenancy Condition**" shall mean that at least (i) five (5) of the Named Inducement Tenants have accepted possession of the Floor Area designated for the such Named Inducement Tenant on Exhibit B, and are open to the public for the operation of retail business, and, if not open then such tenants shall be actively and continuously engaged in the fixturing and merchandising their respective premises, and (ii) at least sixty-five (65%) percent of Floor Area of the Section III Inline Space (excluding the Premises), shall be open to the public for the operation of retail business by national tenants or regional tenants of the type typically found in comparable regional shopping centers located in the Fayetteville, NC metropolitan area, and, if not open then such tenants shall be actively and continuously engaged in the fixturing and merchandising therein. As used in this Lease, (i) "**national retailer**" shall mean a retail company operating at least one hundred (100) stores, in the aggregate, in the continental United States, under a single tradename in first-class shopping centers, and (ii) "**regional retailer**" shall mean a retail company operating at least twenty-five (25) stores in the states of Virginia, North Carolina, South Carolina and Georgia, in the aggregate, under a single tradename in first-class shopping centers.

2.5.2 If, on the Delivery Date, the Initial Co-Tenancy Condition has not been satisfied, Tenant shall have the right, at its sole option, to:

(a) accept delivery of physical possession of the Premises; or

(b) defer its acceptance of delivery of physical possession of the Premises to a later date (but not later than the date on which the Initial Co-

1 Tenancy Condition is satisfied and Tenant receives notice from Landlord thereof),  
2 whereupon the Delivery Date shall be deemed to have occurred on the date that  
3 Tenant actually accepts physical possession of the Premises (subject to the other  
4 provisions of this Article 2 and the continuing satisfaction of the Delivery Date  
5 Conditions); and

6 in either event, if the Rent Commencement Date occurs before the satisfaction of the  
7 Initial Co-Tenancy Condition, Tenant shall be entitled to pay Alternate Rent in lieu of  
8 Fixed Rent and Percentage Rent until the Initial Co-Tenancy Condition is satisfied and  
9 the Landlord gives Tenant notice thereof, subject to any other applicable provisions of  
10 this Article 2.

11 2.5.3 In addition to the provisions of Subsection 2.5.2 above, if the Initial  
12 Co-Tenancy Condition has not been satisfied by the first (1st) anniversary of the Delivery  
13 Date established pursuant to Subsection 2.3.2(a) above, then Tenant shall have the right,  
14 at any time prior to the satisfaction of the Initial Co-Tenancy Condition, upon giving  
15 Landlord at least one hundred twenty (120) days' prior notice, to terminate this Lease as  
16 of the date specified in said notice. Landlord may negate such termination by causing the  
17 Initial Co-Tenancy Condition to be satisfied within thirty (30) days after the date on  
18 which said termination notice is given. If this Lease is terminated hereunder, neither  
19 party shall have any further liability under this Lease, except: (i) for those obligations  
20 which survive the expiration or other termination of this Lease pursuant to the express  
21 terms of this Lease, and (ii) Landlord shall promptly reimburse Tenant for all of its  
22 reasonable third-party costs and expenses incurred in connection with this Lease,  
23 including, without limitation, costs associated with the preparation and review of plans  
24 and specifications, attorney's fees, and the performance of Tenant's Work, not to exceed  
25 Fifty Thousand Dollars (\$50,000).

26 Section 2.6 Intentionally Omitted.

27 ARTICLE 3  
28 IMPROVEMENTS

29 Section 3.1 Landlord's Work and Tenant's Work. Landlord shall, at its sole cost  
30 and expense, perform the work and obligations described on Exhibit D, Exhibit D-1, and  
31 Exhibit F hereto, and the "Final Landlord's Plans and Specifications" (hereinafter defined  
32 in Section 3.2) (collectively, "Landlord's Work"), and shall deliver possession of the  
33 Premises to Tenant in the condition described therein. Except for Landlord's Work,  
34 Tenant shall, at its own cost and expense, do any and all non-structural work to the  
35 interior of the Premises (hereinafter referred to as "Tenant's Work") which Tenant  
36 desires to adapt the Premises to Tenant's use.

37 Section 3.2 Plan Approvals.

38 3.2.1 Preparation of Plans and Specifications.

39 (a) Within thirty (30) days after the Effective Date, Landlord  
40 shall deliver to Tenant drawings showing the proposed footprint, column layout, and  
41 interior clear dimensions of the Premises (the "Preliminary LOD") [Limits of Demised],  
42 which shall be subject to any reasonable modifications indicated by Tenant as provided  
43 below. The Preliminary LOD shall be substantially consistent with Exhibits B, D, and D-  
44 1 hereto.

45 (b) Within thirty (30) days after Tenant's receipt of the  
46 Preliminary LOD, Tenant shall deliver to Landlord its revisions thereto (the "Revised  
47 LOD"), showing the location of the interior structural grid (column layout), storefront  
48 opening, and office core, the location and arrangement of the loading facilities, trash

1 compactor pad, and trash container pad(s), and any reasonable revisions to the interior  
2 clear dimensions.

3 (c) Within fifteen (15) days after Landlord's receipt of the  
4 Revised LOD, Landlord shall deliver to Tenant a final LOD (as approved by Tenant, the  
5 "**Certified LOD**"), certified by Landlord, which shall incorporate all of the elements of  
6 the Revised LOD. Within fifteen (15) days after its receipt of such final LOD, Tenant  
7 shall notify Landlord of Tenant's approval thereof or the reasons why such approval  
8 cannot be granted, and Landlord shall, within fifteen (15) days after receiving such  
9 notice, make any revisions necessary to correct such matters and obtain Tenant's  
10 approval. Upon Tenant's approval of the Certified LOD, any further changes thereto  
11 shall be subject to Tenant's prior written approval (which may be withheld in its sole  
12 discretion), provided that, as to changes required to conform to Legal Requirements,  
13 Tenant shall have reasonable approval rights within the confines of said Legal  
14 Requirements. After Tenant approves the Certified LOD, Landlord shall be responsible  
15 for any and all reasonable costs incurred and delays experienced by Tenant in connection  
16 with any further changes to the Certified LOD required by Landlord.

17 (d) Within thirty (30) days after Tenant's receipt of the Certified  
18 LOD, Tenant shall deliver to Landlord its Fixture Plan (F1); Floor Finish Plans Notes and  
19 Details (F2); Power/Specialty Lighting Plan and Notes (F3); Lighting Plans and Notes  
20 (F4); and High-Pile Storage Plan (F5) (collectively, "**Tenant's Plans**"), all of which shall  
21 be substantially consistent with the Certified LOD (as same may be reasonably modified  
22 by Tenant, as noted above).

23 (e) Within thirty (30) days after receipt of Tenant's Plans,  
24 Landlord shall prepare and deliver to Tenant, in a single submission, "**Landlord's Plans  
25 and Specifications**" (as defined in Exhibit D hereto), and each of the plans which  
26 collectively constitute Landlord's Plans and Specifications shall be at least 85%  
27 complete, in Tenant's reasonable judgment. Landlord's Plans and Specifications shall be  
28 substantially consistent with Tenant's Plans, the Certified LOD, and Exhibits B, D, D-1,  
29 and F hereto.

30 (f) Within thirty (30) days after its receipt of Landlord's Plans  
31 and Specifications, Tenant shall give Landlord notice of the respects, if any, in which  
32 said plans fail to meet Tenant's reasonable approval and/or fail to conform to the  
33 Certified LOD, Tenant's Plans, and/or Exhibits B, D, D-1, and F hereto.

34 (g) Within fifteen (15) days after the date on which Landlord  
35 receives Tenant's notice (described in the preceding paragraph), Landlord shall deliver to  
36 Tenant, in a single submission, revised Landlord's Plans and Specifications, which shall  
37 be 100% complete and shall address all of Tenant's comments.

38 (h) Within fifteen (15) days after its receipt of the revised  
39 Landlord's Plans and Specifications, Tenant shall notify Landlord of Tenant's approval  
40 thereof or the reasons why such approval cannot be granted.

41 (i) In the event that the Landlord's re-submittal of Landlord's  
42 Plans and Specifications is not approved by the Tenant, then Landlord shall further revise  
43 Landlord's Plans and Specifications to address all Tenant comments and re-submit them  
44 to Tenant for Tenant's review and approval. The re-submittal described in the preceding  
45 sentence shall be delivered to Tenant by Landlord within fifteen (15) days of receipt of  
46 Tenant's notice that the previous submittal has not been approved. The process described  
47 in this subparagraph (i) and subparagraph (h) above shall be repeated until Landlord has  
48 secured Tenant's approval of Landlord's Plans and Specifications. Landlord's Plans and  
49 Specifications as finally approved by Tenant are referred to herein as the "**Final  
50 Landlord's Plans and Specifications**".

(j) Upon Tenant's approval of the Final Landlord's Plans and Specifications, any further changes thereto shall be subject to Tenant's prior written approval. Unless specifically noted on a separate summary sheet attached to the Final Landlord's Plans and Specifications, to the extent of a conflict between the terms and provisions of Tenant's Plans, Exhibit B, Exhibit D, Exhibit D-1, and/or Exhibit F hereto, and the terms and provisions of the Final Landlord's Plans and Specifications, then the terms and provisions of Tenant's Plans, Exhibit B, Exhibit D, Exhibit D-1, and Exhibit F shall govern and prevail.

(k) All submissions by the parties of the Preliminary LOD, the Revised LOD, the Certified LOD, the Tenant's Plans, the Landlord's Plans and Specifications, the Final Landlord's Plans and Specifications, and the measurements required under Subsections 3.4.1 and 3.4.2 below shall be made (or accompanied) by the computer files thereof formatted in any version of "Autocad 2002" up to "Autocad 2010".

### 3.2.2 Plan Changes.

(a) Tenant shall have the right to make changes from the standards and specifications set forth in "Tenant's Prototype Drawings and Specifications" and/or the "Project Manual", referred to in Exhibit D hereto (collectively, the "Prototype Standards/Specifications"), and/or to require Landlord to subsequently make changes to Landlord's Plans and Specifications and/or the Final Landlord's Plans and Specifications in accordance therewith (the "Changes"). Within ten (10) business days after receiving Tenant's request for any Change, Landlord shall give Tenant notice of the cost or savings, and any delay, that may be occasioned by such Change, which notice shall be accompanied by all back-up supporting the cost increases or delays. If Tenant fails to authorize such Change within five (5) business days after receiving Landlord's notice, Tenant shall be deemed to have disapproved such Change. If, after delivering Tenant's Plans to Landlord pursuant to Subsection 3.2.1(d) above, Tenant subsequently revises Tenant's Plans, and such changes result in Changes to the Landlord's Plans and Specifications or the Final Landlord's Plans and Specifications, Tenant shall not be responsible for any costs ("hard" or "soft") associated therewith as to the first set of changes to the Tenant's Plans only, provided that: (i) the revised Tenant's Plans do not materially deviate from the Prototype Standards/Specifications and are delivered to Landlord at least thirty (30) weeks prior to the Delivery Date, in Tenant's reasonable estimation, and (ii) the Changes associated therewith do not impact the design of the building shell.

(b) Tenant shall pay to Landlord the net reasonable additional third-party costs of Landlord's Work resulting directly and solely from the aggregate Changes (exclusive of any charges for overhead and profit, other than sums not exceeding 5% subcontractor profit and 5% general contractor profit thereon), taking into consideration any and all actual costs and savings resulting from all Changes, in the aggregate (including, without limitation, reasonable costs approved by Tenant in advance associated with any acceleration of the work schedule which Tenant, at its sole option, may require). Such payment shall be due and payable within thirty (30) days after Tenant's receipt of backup information reasonably supporting all such costs, including, without limitation, invoices, receipts and lien waivers of subcontractors and materialmen, but in no event earlier than the Delivery Date.

(c) Landlord shall pay to Tenant the net reasonable cost savings resulting from the aggregate Changes, taking into consideration all reasonable additional third-party costs of Landlord's Work directly and solely resulting from the Changes (exclusive of any charges for overhead and profit, other than sums not exceeding 5% subcontractor profit and 5% general contractor profit thereon). At Tenant's request, Landlord shall deliver to Tenant backup information reasonably supporting all such



1 additional costs, including, without limitation, invoices, receipts, and lien waivers of  
2 subcontractors and materialmen. Such payment shall be due and payable within thirty  
3 (30) days after the Delivery Date.

4 (d) If the Changes occur during the preparation of any of the  
5 plans described in Subsection 3.2.1 above, then the deadlines for preparation and delivery  
6 of the plans then being prepared shall be extended as reasonably necessary to incorporate  
7 such Changes. If, despite Landlord's diligent efforts in performing Landlord's Work, the  
8 Changes cause a net delay in the Substantial Completion of Landlord's Work (taking into  
9 consideration any time reductions resulting from such changes), then: (i) the Rent  
10 Commencement Date shall be determined as if such delay had not occurred, (ii) the  
11 commencement of the Slack Period, and the dates set forth in clauses (a) and (b) of  
12 Subsection 3.3.2 below, shall be extended by the number of days of such net delay; and  
13 (iii) with respect to Changes requested after the Delivery Date Notice is given, for  
14 purposes of calculating liquidated damages under Subsection 2.3.2(b) above, the Delivery  
15 Date shall be extended by the number of days of such net delay.

16 Section 3.3 Performance of Work.

17 3.3.1 Both Landlord's Work and Tenant's Work shall be performed in a  
18 good and workmanlike manner, in compliance with all applicable Legal Requirements,  
19 utilizing only new, first-class materials, and in accordance with all insurance company  
20 requirements. Landlord shall perform Landlord's Work in a manner such that Tenant  
21 will be able to obtain Tenant's Permits. Landlord shall pay any and all impact fees and  
22 related governmental charges in connection with the Greater Shopping Center and the  
23 Premises. If Tenant's Permits cannot be obtained because Landlord's Work has not been  
24 completed or has been performed improperly or by reason of any then existing condition  
25 of the Greater Shopping Center, Landlord shall remedy the situation so as to enable  
26 Tenant to obtain Tenant's Permits, and the Delivery Date shall be deemed delayed, for  
27 Tenant's benefit only, on a day-for-day basis for each day of delay occasioned thereby.

28 3.3.2 If: (a) Landlord's Work has not been commenced (*i.e.*, if Landlord  
29 has not yet poured foundation footings for the Premises) by April 15, 2017, or (b) the  
30 Delivery Date shall not have occurred by October 1, 2017 (subject to (i) *Force Majeure*,  
31 not to exceed sixty (60) days in the aggregate, and (ii) Tenant Delays, provided that  
32 Landlord shall have given Tenant notice of such event of *Force Majeure* or Tenant Delay  
33 promptly after its occurrence), Tenant may thereafter, during such time as Landlord's  
34 Work has not been commenced or the Delivery Date has not occurred, as the case may  
35 be, consider Landlord to be in default hereunder and, at Tenant's option in its sole  
36 discretion, elect to:

37 (i) terminate this Lease, if Landlord shall fail to fully cure  
38 such default within thirty (30) days after receiving Tenant's notice thereof, in  
39 which event neither party shall have any further liability hereunder, except: (i) for  
40 those obligations which survive the expiration or other termination of this Lease  
41 pursuant to the express terms of this Lease, and (ii) Landlord shall be obligated to  
42 promptly reimburse Tenant, as Tenant's sole monetary remedy by reason thereof,  
43 for all its reasonable third-party costs and expenses incurred in connection with  
44 this Lease (including, without limitation, costs associated with the preparation and  
45 review of plans and specifications, attorney's fees, and the performance of  
46 Tenant's Work), not to exceed Fifty Thousand Dollars (\$50,000); and/or

47 (ii) avail itself of the remedies set forth in Section 16.2  
48 below (provided, however, that the cure period set forth therein shall not be  
49 applicable); and/or

50 (iii) extend one or more times the dates set forth in clauses  
51 (a) and/or (b) of this Subsection 3.3.2 to such future dates designated by Tenant in

notice given to Landlord, and as to any extension granted with respect to the clause 3.3.2(b) above, in addition to any other rights and remedies to which Tenant may be entitled, the Rent Commencement Date shall be postponed by two (2) days for each day of the extension granted as to clause 3.3.2(b) above.

The election by Tenant of any one or more of the foregoing remedies shall not preclude the subsequent election of any alternative remedy provided in this Section, this Lease, at law, or in equity.

**3.3.3 Landlord's Work Performed After Delivery of Possession.** On or before the Delivery Date, Landlord's and Tenant's representatives together shall conduct a walk-through of the Premises to compile a punch list of the "Punch List Items" (hereinafter defined). Tenant shall deliver to Landlord a copy of said punch list within five (5) days after the walk-through. Landlord shall complete any Punch List Items within fifteen (15) days after it receives a copy of said punch list or such additional period of time as may reasonably be necessary with respect to any particular Punch List Item that cannot reasonably be completed within such 15-day period, provided Landlord is diligently pursuing completion of such work (but in no event shall such additional time period exceed an additional 30 days). If Landlord fails to complete any item on said punch list within said time period, Tenant shall have the right to complete such item(s) using its own contractors and receive reimbursement from Landlord for the reasonable costs and expenses thereof upon demand. If reasonably required by Tenant, any portion of Landlord's Work which is performed after Tenant accepts physical possession of the Premises shall occur only "after hours", when neither Tenant nor any of its agents, contractors, employees and servants are working within the Premises, and Landlord shall reimburse Tenant for the reasonable costs and expenses incurred by Tenant by reason of such "after hours" performance of Landlord's Work. As used herein, the term "**Punch List Items**" shall mean such minor items of a cosmetic nature which, when considered as a whole, do not adversely affect either the performance of Tenant's Work or Tenant's ability to conduct its normal business operations in the Premises.

**3.3.4 Tenant's Right of Entry.** Prior to the Delivery Date, Tenant may enter upon the Premises for the purposes of inspecting the work, taking measurements, making plans, erecting temporary or permanent signs and doing such other work as may be appropriate or desirable without being deemed thereby to have taken possession or obligated itself to pay Rent, provided, however, that Tenant shall not, during the course of such work, materially interfere with the performance of Landlord's Work and shall indemnify and hold Landlord harmless from and against any and all claims or losses arising from Tenant's entry upon the Premises, except to the extent caused by Landlord, its agents, employees, or contractors.

**3.3.5 Intentionally Omitted.**

**3.3.6 Work Requirements After Delivery Date.** Following the Delivery Date, any construction by Landlord or other tenants or occupants of the Shopping Center affecting any portion of the Shopping Center shall be subject to the following terms and conditions:

(a) No staging and storage of materials and parking of construction vehicles shall occur within the portions of the Shopping Center identified as "Critical Area" on Exhibit B hereto (the "**Critical Area**");

(b) Landlord shall diligently ensure that, from and after Tenant's opening for business to the public, no ingress, egress or passage of any construction, construction related delivery and related vehicles engaged in the performance of such work or other construction activities within the Section III Inline Space shall take place except through the entrance/exit drive designated as the "Construction Drive" on Exhibit B hereto. Further, with respect to any construction work occurring on the Outparcels,



1 Landlord shall proceed diligently to ensure that no ingress, egress or passage of any  
2 construction, delivery and related vehicles engaged in the performance of such work or  
3 other construction activities shall unreasonably interfere with the normal conduct of any  
4 business operations in the Premises; and

5 (c) Landlord shall maintain, or cause to be maintained, the  
6 Greater Shopping Center in a clean, safe, and sightly condition, and shall use reasonable  
7 efforts to ensure that such construction shall not materially adversely interfere with the  
8 normal conduct of any business operations in the Premises.

9 3.3.7 Tenant's Trailer. Landlord shall install a trailer containing two (2)  
10 offices for Tenant's exclusive use, together with Cost Plus, Inc., in conducting employee  
11 interviews and recruiting, in accordance with Exhibit D hereto, in the location shown on  
12 Exhibit B hereto. Said trailer shall be installed and operational at least forty-five (45)  
13 days prior to the Delivery Date, and shall be removed within twenty (20) days (but not  
14 sooner than ten (10) days) after the Delivery Date. Landlord shall have the right to  
15 temporarily relocate the trailer location to accommodate Landlord's final construction  
16 (e.g., striping parking lot or landscaping) to a location mutually agreeable to Landlord  
17 and Tenant.

18 Section 3.4 Measurement: Adjustment of Rent.

19 3.4.1 Measurement of Premises and Shopping Center. Within five (5)  
20 days after the completion of the first course of masonry for the exterior walls of the  
21 Premises and demising walls of the Premises (and at least sixty (60) days prior to the  
22 Delivery Date), Landlord shall deliver to Tenant a certification to Tenant by Landlord's  
23 licensed architect, surveyor or engineer of the interior clear dimensions and the Floor  
24 Area (with the dimensions on which it is based) of the Premises and the Floor Area of the  
25 Shopping Center, the measurements of which shall be subject to confirmation by  
26 Tenant's licensed architect, surveyor or engineer. If Landlord shall fail so to deliver such  
27 certification to Tenant, Tenant shall have the right to have any of such measurements  
28 made and certified to Landlord by Tenant's licensed architect, surveyor or engineer. If  
29 the interior clear dimensions and/or the Floor Area of the Premises vary from those  
30 shown on the Certified LOD (as may be modified by any applicable Changes), then  
31 Landlord shall correct such work to conform to the Certified LOD (as may be modified  
32 by any applicable Changes).

33 3.4.2 Intentionally Omitted.

34 3.4.3 Adjustment of Fixed Rent and Tenant's Pro Rata Share. Subject to  
35 the foregoing provisions of this Section 3.4, if the measurement of the Premises shall  
36 indicate a Floor Area less than the Floor Area of the Premises set forth in Subsection  
37 1.1.28 above, the Fixed Rent and any other applicable provision of this Lease (including,  
38 without limitation, Tenant's Pro Rata Share) shall be reduced to conform to the actual  
39 measurement, and Tenant shall receive a proportional refund of any Rent theretofore paid  
40 to Landlord. If the measurement of the Premises indicates that the actual Floor Area of  
41 the Premises exceeds the Floor Area of the Premises set forth in Subsection 1.1.28 hereof  
42 (as same may be increased due to Changes under Section 3.2 above), neither Fixed Rent  
43 nor Tenant's Pro Rata Share shall be increased by reason thereof. Landlord and Tenant  
44 shall each promptly execute and deliver to the other an amendment memorializing any  
45 change to the Fixed Rent, Tenant's Pro Rata Share, or any other applicable provisions of  
46 this Lease, made pursuant to this Section 3.4. Any dispute between the parties with  
47 respect to the Floor Area of the Premises, the square footage of said non-selling space, or  
48 the Floor Area of the Shopping Center shall be resolved by arbitration in accordance with  
49 the provisions of Section 16.3 below.

ARTICLE 4  
FIXED RENT, TAXES AND PERCENTAGE RENT; DETERMINATION AND  
PAYMENT

Section 4.1 Fixed Rent. Commencing on the Rent Commencement Date and continuing throughout the Term, Tenant shall pay to Landlord the Fixed Rent, in equal successive monthly installments, in advance, on the first day of each and every calendar month throughout the Term, except that Fixed Rent payable for any partial calendar month during the Term shall be prorated based on a 365-day year. Fixed Rent shall be paid without deduction or set-off, except to the extent otherwise expressly provided herein.

Section 4.2 Payment of Rent. All Rent shall be mailed or otherwise delivered to Landlord's Mailing Address above or, upon at least thirty (30) days' prior notice to Tenant, to such other address as Landlord may from time to time designate. Landlord acknowledges and agrees that for administrative purposes, Tenant may designate a corporation or other entity to act as a paying agent (the "*Paying Agent*"), to make all Rent payments due to Landlord under this Lease. Said designation (which may be revoked by Tenant at any time) is not intended as, and shall not constitute, an assignment of any rights or obligations of Tenant to the Paying Agent, and Tenant shall remain primarily liable for payment of Rent under this Lease. All payments of Rent received by Landlord from the Paying Agent shall be credited to Tenant as if such payments of Rent had been made by Tenant directly to Landlord.

Section 4.3 Real Estate and Other Taxes.

4.3.1 Landlord shall pay on or before the due dates thereof all "Taxes" (defined in Subsection 4.3.3 below) other than personal property taxes levied against tenants. Throughout the Term, Landlord shall cause the Shopping Center to be maintained entirely within tax parcels and lots that exclude any property not a part of the Shopping Center.

4.3.2 (a) Tenant shall pay to Landlord Tenant's Pro Rata Share of the Taxes which accrue during the Term, subject to the provisions of this Section 4.3. Any Taxes for a real estate fiscal tax year, only a part of which is included within the Term, shall be adjusted between Landlord and Tenant on the basis of a 365-day year as of the Rent Commencement Date or the date on which the Term expires or earlier terminates, as the case may be, for the purpose of computing Tenant's Pro Rata Share of Taxes. If, by law, any Taxes may, at the option of the taxpayer, be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Landlord shall exercise such option so as to maximize the number of installments, and Landlord shall pay the same as they come due and before any fine, penalty, interest or cost may be added thereto for nonpayment thereof.

(b) Landlord shall submit to Tenant a copy of the bill for Taxes issued by the applicable taxing authority, a computation of Tenant's Pro Rata Share of such Taxes and proof of the payment of Taxes for the previous payment period, as well as copies of all notices concerning assessments, tax rates, and changes thereto. Tenant shall pay Landlord in the amount required by this Subsection 4.3.2 within thirty (30) days after receipt of such bill (but in no event earlier than the fifteenth (15th) day prior to the date on which such Taxes would become delinquent).

4.3.3 (a) As used herein, "*Taxes*" shall mean all general, *ad valorem* real estate taxes, and assessments for betterments and improvements that are levied or assessed by any lawful authority on the Shopping Center (general or special), including any substitution therefor, in whole or in part, due to a future change in the method of taxation. Taxes shall be reduced by any deferral, abatement, or other tax-lowering adjustment received by Landlord from the taxing authorities. For purposes of computing

1 Tenant's Pro Rata Share of Taxes, Taxes shall not include any: (1) income, excise,  
2 profits, estate, inheritance, succession, gift, transfer, franchise, capital, or other tax or  
3 assessment upon Landlord or upon the rentals payable under this Lease; (2) taxes on rents  
4 (other than to the extent that such taxes are customarily paid by retail tenants in the state  
5 in which the Shopping Center is located), gross receipts or revenues of Landlord from the  
6 Premises; (3) fine, penalty, cost or interest for any tax or assessment, or part thereof,  
7 which Landlord or its lender failed to timely pay (except if same are caused by an Event  
8 of Default); (4) assessment for a public improvement arising from the initial construction  
9 or expansion of the Greater Shopping Center or the Premises (it being agreed that all  
10 assessments imposed during the Term which are permitted to be included within Taxes  
11 hereunder shall, for the purposes of computing Tenant's Pro Rata Share thereof, be  
12 deemed to have been paid in the maximum number of installments permitted by the  
13 applicable taxing authority); (5) Taxes resulting directly from an increase in the  
14 assessment caused by a sale or ground lease of all or any portion of the Shopping Center  
15 to an Affiliate of Landlord or more than once every five (5) years; or (6) fees imposed  
16 upon Landlord in connection with Landlord's development of the Greater Shopping  
17 Center (including, without limitation, trip generation fees). All Taxes payable by Tenant  
18 pursuant to this Section 4.3 shall be determined as if the Shopping Center was the only  
19 property owned by Landlord. Landlord represents to Tenant that, as of the Effective Date  
20 and, to the best of Landlord's knowledge, as of the anticipated Delivery Date, no portion  
21 of the Shopping Center is or will be (i) subject to or the beneficiary of an abatement,  
22 exemption and/or phase-in of Taxes, (ii) subject to any special assessments or similar  
23 charges, or (iii) included in any special improvement district(s) which would result in  
24 higher sales taxes or other similar impositions than would exist in the absence of such  
25 district(s). Landlord estimates that the Tenant's Pro Rata Share of Taxes for the first full  
26 calendar year after the Shopping Center has been completed and fully-assessed will be  
27 approximately \$2.25 per square foot of Floor Area in the Premises.

28 4.3.4 At Tenant's request, Landlord shall contest the amount or validity of  
29 any assessed valuation or Taxes, failing which, Tenant shall have the right to contest the  
30 assessed valuation or Taxes by appropriate proceedings conducted in good faith,  
31 whereupon Landlord shall cooperate with Tenant, execute any and all documents  
32 required in connection therewith and, if required by any governmental authority having  
33 jurisdiction, join with Tenant in the prosecution thereof. If, as a result of any contest or  
34 otherwise, any rebate or refund of Taxes is received, Tenant shall be entitled to Tenant's  
35 Pro Rata Share thereof (after deducting reasonable and customary expenses).  
36 Notwithstanding the foregoing, if Tenant is the sole occupant of the tax lot on which the  
37 Premises is located, then Tenant shall have the right to contest the assessed valuation or  
38 Taxes without first requesting that Landlord do so.

39 Section 4.4 Percentage Rent.

40 4.4.1 Payment. During and for each full calendar year during the Term,  
41 Tenant shall pay annual percentage rent ("**Percentage Rent**") equal to three (3%) percent  
42 (the "**Percentage Multiple**") of all "Gross Sales" (hereinafter defined in Subsection  
43 4.4.2) resulting from business conducted in, on or from the Premises during such calendar  
44 year in excess of Five Million Dollars (\$5,000,000.00) and less than or equal to Seven  
45 Million Dollars (\$7,000,000.00) (the Five Million Dollars (\$5,000,000.00) and Seven  
46 Million Dollars (\$7,000,000.00) break points are each referred to as the "**Sales Break**  
47 **Point**" as the context requires. Each Sales Break Point shall be adjusted when the Fixed  
48 Rent increases by the same percentage as the Fixed Rent increases (so, for example, as of  
49 the period commencing on the first February 1 occurring after the fifth (5th) anniversary  
50 of the Rent Commencement Date, the \$5,000,000 Sales Break Point shall be increased by  
51 10% (being the percentage increase from \$9.00 per square foot of Floor Area to \$9.90 per  
52 square foot of Floor Area) to \$5,500,000, and the \$7,000,000 Sales Break Point shall  
53 increase by 10% to \$7,700,000). Within sixty (60) days after the close of each calendar  
54 year, Tenant shall furnish to Landlord a compilation prepared by an officer of Tenant



1 setting forth the amount of Gross Sales during the preceding calendar year and showing  
2 the amount of Percentage Rent, if any, required to be paid by Tenant for such calendar  
3 year, provided, however, that Tenant shall not be required to provide such compilation if  
4 the amount of Gross Sales for such calendar year is less than ninety percent (90%) of the  
5 Sales Break Point. The full amount of any Percentage Rent due shall be paid to Landlord  
6 simultaneously with the furnishing of said compilation. Notwithstanding the foregoing,  
7 no Percentage Rent shall be payable with respect to the period commencing on the Rent  
8 Commencement Date and ending on the December 31 next following the Rent  
9 Commencement Date, and Gross Sales generated during any period when Alternate Rent  
10 is payable under this Lease shall be excluded from the determination of Gross Sales for  
11 purposes of computing Percentage Rent hereunder.

12 4.4.2 Definition of Gross Sales. As used herein, the term "**Gross Sales**"  
13 shall mean the total amount of all merchandise or services sold and fulfilled from the  
14 Premises by Tenant or any sublessee, licensee or concessionaire of Tenant (subject,  
15 however, to Subsection 4.4.6) and any other person or entity operating in the Premises  
16 (for purposes of this Subsection 4.4.2 only, collectively, "**Tenant**"), whether for cash,  
17 credit or otherwise, including redemption of gift certificates and gift cards. Tenant shall  
18 record, at the time of each Gross Sale, all receipts from such sale, whether for cash, credit  
19 or otherwise, in a cash register or cash registers, or in such electronic or computer device  
20 which records sales in a manner which is generally acceptable by industry standards. The  
21 term "**Gross Sales**" shall exclude: (1) proceeds from any sales tax, gross receipts tax or  
22 similar tax, by whatever name called, which are separately stated and are in addition to  
23 the sales price, (2) *bona fide* transfers or exchanges of merchandise from the Premises to  
24 any other stores or warehouses of Tenant or any Affiliates of Tenant, and returns to  
25 shippers and manufacturers for credit, (3) refunds or credits given to customers for  
26 merchandise returned or exchanged at the Premises (regardless of where or how  
27 purchased), (4) sales of Tenant's fixtures and equipment not in the ordinary course of  
28 Tenant's business, (5) to the extent of prior inclusion in Gross Sales, bad debts when  
29 written off the books of Tenant, provided that any collections made on account of such  
30 bad debts shall be included in Gross Sales when received, (6) receipts from vending  
31 machines installed solely for the use of Tenant's employees and receipts from pay  
32 telephones, (7) sales to employees of Tenant at discount (which, for the purposes of  
33 determining Percentage Rent hereunder, shall not exceed two percent (2%) of Gross  
34 Sales per calendar year or pro rata portion thereof, as applicable), (8) fees paid to  
35 independent third party credit card, charge card, debit card, and check  
36 verification/guaranty companies in connection with sales charged to or debited from  
37 customers' credit cards, charge cards, or debit cards, or sales paid for by customers by  
38 checks, as applicable, (9) proceeds from delivery, gift-wrapping and check cashing  
39 charges (which, for the purposes of determining Percentage Rent hereunder, shall not  
40 exceed two percent (2%) of Gross Sales per calendar year or pro rata portion thereof, as  
41 applicable), (10) sums and credits received in settlement of claims for loss or damage to  
42 merchandise, (11) separately stated service, finance and interest charges, (12) the dollar  
43 value of coupons utilized by customers in the purchase of merchandise from the  
44 Premises, (13) close-out or bulk sales of inventory to jobbers or wholesalers, (14) sales of  
45 gift certificates and/or gift cards, (15) forfeited deposits; (16) sales of alcoholic  
46 beverages, but only if local liquor licensing laws require that Landlord be considered a  
47 beneficiary of such liquor sales, and thus subject to licensure under such laws, (17) sales  
48 of merchandise fulfilled from the Premises but where payment is not made at the  
49 Premises (e.g., online or at another store); and (18) sales of merchandise where payment  
50 is made at the Premises but not fulfilled from the Premises.

51 4.4.3 Books and Records. Tenant shall maintain at the Premises or at its  
52 principal office, complete books and records reflecting all elements of Gross Sales.  
53 Tenant shall be allowed to maintain its books and records in a computerized form;  
54 provided, however, that (i) such computerized books and records provide the same level  
55 of information as the books and records described above, are retained for the full record

1 retention period provided for herein, and (ii) promptly upon request, printed copies of any  
2 such books and records are made available at Tenant's principal office for inspection by  
3 Landlord's representatives who are engaged in inspecting and/or auditing Tenant's books  
4 and records as provided herein. Such books and records shall be kept in accordance with  
5 generally accepted accounting principles (or successor accounting standards) and  
6 practices consistently applied and shall be retained by Tenant for at least two (2) years  
7 following the end of the calendar year to which they refer.

8 4.4.4 Landlord's Right to Audit. Landlord and/or Landlord's auditor  
9 shall have the right, upon at least thirty (30) days prior notice to Tenant (but not more  
10 than once per annum), to inspect and/or audit the records of Tenant relating to Gross  
11 Sales. If any such audit discloses a deficiency in the Gross Sales reported by Tenant,  
12 Tenant shall pay any deficiency in Percentage Rent owing to Landlord on account of such  
13 deficiency. If such deficiency is in excess of five (5%) percent of the Gross Sales  
14 reported by Tenant and Percentage Rent is then payable, Tenant shall also pay Landlord's  
15 reasonable costs of the inspection and audit. Tenant has not and does not make any  
16 representation or warranty as to the amount of Gross Sales which are anticipated from the  
17 Premises.

18 4.4.5 Confidentiality. Landlord shall not disclose to any third party  
19 Tenant's Gross Sales or the amount of Percentage Rent paid or payable by Tenant,  
20 provided, however, that (i) such information was not previously disclosed by Tenant to  
21 such third party or to the public generally, and (ii) nothing contained herein shall restrict  
22 Landlord from disclosing such information as may be required by applicable Legal  
23 Requirements or to its accountants, attorneys, *bona fide* prospective purchasers, or  
24 current or prospective Mortgagees or underlying lessors of all or any portion of  
25 Landlord's interest in the Shopping Center (provided that each of such recipients shall be  
26 bound to the same non-disclosure provisions as are imposed upon Landlord).

27 4.4.6 Licensees. If Tenant enters into any agreement(s) with any non-  
28 Affiliate person or entity (hereinafter, the "Licensees") permitting the Licensees to  
29 operate businesses or concessions within the Premises, then, in lieu of including the  
30 Gross Sales actually achieved by such Licensee(s) from such licensed portion of the  
31 Premises, Tenant may elect to include in Gross Sales an amount equal to the product  
32 obtained by multiplying (i) the Floor Area of such licensed space, by (ii) the average  
33 Gross Sales per square foot of Floor Area for the remainder (*i.e.*, the unlicensed portion)  
34 of the Premises. The provisions of this Subsection 4.4.6 shall not apply to more than  
35 4,000 square feet of Floor Area, in the aggregate, in the Premises at any one time. If  
36 more than 4,000 square feet of the Floor Area of the Premises is licensed to Licensees at  
37 any one time, then Tenant shall have the right to designate, from time to time, those  
38 portions of the Premises which will be entitled to the benefit of this Subsection 4.4.6.

39 4.4.7 Adjustment for Assignees and Sublessees. In the event an assignee  
40 of this Lease or any sublessee of all or any portion of the Floor Area of the Premises does  
41 not use the Premises (or, as applicable, the subleased portion thereof) as a store  
42 specializing primarily in the sale of the Permitted Items, then the Percentage Multiple and  
43 the Sales Break Point shall be amended, with respect to the Premises (or, as applicable,  
44 the subleased portion thereof), to such other percentage (the "Adjusted Percentage  
45 Multiple") and such other break point (the "Adjusted Break Point") as shall, as of the  
46 effective date of such assignment or sublease, be then generally applicable to such use of  
47 the Premises (or, as applicable, the subleased portion thereof) by normal and accepted  
48 business standards applicable to such use, taking into consideration (i) the location of the  
49 Shopping Center, and (ii) the nature of the Shopping Center (*e.g.*, strip center, mall,  
50 power center, etc.) [it being agreed that with respect to any sublease covering less than all  
51 of the Floor Area of the Premises, the following shall apply: (1) the Sales Break Point  
52 relating to any portion of the Premises so subleased shall be the quotient of (aa) the  
53 annual base subrent payable by each sublessee under the terms of its sublease on account

1 of the calendar year for which Percentage Rent is being determined, divided by (bb) the  
2 Adjusted Percentage Multiple applicable to such sublessee, and (2) the Sales Break Point  
3 relating to the non-subleased portions of the Premises shall be determined by dividing the  
4 product of (x) the Fixed Rent for the calendar year for which Percentage Rent is being  
5 determined per square foot of the Premises, and (y) the Floor Area of such retained  
6 portion of the Premises, by the Percentage Multiple.

7 4.4.8 Any dispute between the parties relative to the provisions of this  
8 Section 4.4, including, without limitation, the amount of Percentage Rent payable by  
9 Tenant, shall be submitted to arbitration in accordance with the provisions of Section  
10 16.3 of this Lease.

11 ARTICLE 5  
12 COMMON AREAS, THEIR USE AND CHARGES

13 Section 5.1 Common Areas: Maintenance.

14 5.1.1 Maintenance of Common Areas. Landlord shall operate, maintain,  
15 repair and replace the Common Areas as required by this Lease and otherwise to the  
16 standard by which Common Areas of comparable shopping centers in the state in which  
17 the Shopping Center is located are operated, maintained, repaired and replaced,  
18 including, without limitation, snow, ice, rubbish and debris removal (including  
19 installation and maintenance of sidewalk refuse containers), landscaping (including,  
20 without limitation, the trimming and pruning of trees to avoid interference with the use or  
21 visibility of canopies or signs on the exterior of the Premises), adequate lighting,  
22 insurance, supervision, use, parking lot paving and striping, drainage, security (as  
23 reasonably required), and control of all Common Areas, and Landlord shall comply with  
24 all applicable Legal Requirements. Notwithstanding anything in this Lease to the  
25 contrary, during any time period Landlord no longer owns the Section I Shopping Center  
26 and/or the Section II Shopping Center (or any portion thereof), Landlord agrees to use  
27 commercially reasonable efforts to enforce its rights under the OEA to cause the Section I  
28 Shopping Center and/or the Section II Shopping Center (or any portion thereof not owned  
29 by Landlord, as the case may be), to be operated and maintained in the condition required  
30 by the OEA.

31 5.1.2 Tenant's Pro Rata Share of Common Areas Charges.

32 (a) During the Term, Tenant shall pay to Landlord Tenant's Pro  
33 Rata Share of the reasonable costs (hereinafter referred to as the "**Common Areas**  
34 **Charges**") paid by Landlord to operate, maintain, insure and repair the Common Areas  
35 within the Shopping Center, which shall include the reasonable premiums for insurance  
36 required to be maintained by Landlord under Section 10.3 below and the Shopping  
37 Center's share of costs to maintain the Road Parcel and certain improvements serving the  
38 entire Greater Shopping Center pursuant to the OEA (and defined therein as the  
39 "Common Area Maintenance Contribution"). Tenant's Pro Rata Share of Common  
40 Areas Charges shall be paid in equal monthly installments on the first day of each  
41 calendar month, in advance, during each calendar year based on Landlord's reasonable  
42 budget.

43 (b) Within ninety (90) days after the end of each calendar year,  
44 Landlord shall provide to Tenant a statement, in detail reasonably satisfactory to Tenant,  
45 of Common Areas Charges for such year, which statement shall be prepared in  
46 accordance with generally accepted accounting principles (or successor accounting  
47 standards) consistently applied (the "**CAC Reconciliation Statement**"). The CAC  
48 Reconciliation Statement shall be certified by Landlord as being accurate and shall be  
49 accompanied by a calculation of Tenant's Pro Rata Share of Common Areas Charges,  
50 and payment to Tenant in the amount of any overpayment made by Tenant during the  
51 preceding calendar year. If Tenant's Pro Rata Share of the actual Common Areas



1 Charges for a calendar year shall exceed the aggregate monthly installments paid by  
2 Tenant during said calendar year, Tenant shall pay to Landlord the deficiency within  
3 sixty (60) days after receipt of such notice. Upon Tenant's request, Landlord shall  
4 promptly deliver to Tenant copies of relevant backup materials (including, but not limited  
5 to, contracts, correspondence and paid invoices) reasonably required by Tenant. If  
6 Landlord fails to timely remit to Tenant the amount of any overpayment hereunder,  
7 Tenant shall have the right (in addition to any rights and remedies to which it may be  
8 entitled under this Lease, at law, or in equity) to offset such amount from payments of  
9 Rent next becoming due hereunder, together with interest thereon at the Lease Interest  
10 Rate from the date such remittance is due until reimbursement or full satisfaction by  
11 credit. Notwithstanding any provision hereof to the contrary, in no event shall the  
12 Tenant's Pro Rata Share of Common Areas Charges (inclusive of the insurance premiums  
13 reimbursable by Tenant pursuant to Section 10.3.3) from the Rent Commencement Date  
14 through the end of the first full calendar year of the Term exceed \$1.50 per square foot of  
15 Floor Area per annum, and with respect to any other calendar year thereafter (exclusive  
16 of the increased cost of snow removal, insurance rate increases and utility rate increases  
17 during such calendar year) exceed one hundred five percent (105%) of the Tenant's Pro  
18 Rata Share of Common Areas Charges paid by Tenant for the immediately preceding  
19 calendar year (exclusive of the increased cost of snow removal, insurance rate increases  
20 and utility rate increases during such calendar year).

21 5.1.3 Exclusions from Common Areas Charges.

22 (a) Common Areas Charges shall not include: (1) the capital cost  
23 of any additions to the Common Areas pursuant to an expansion of the Greater Shopping  
24 Center or any portion thereof; (2) the cost of any replacements or capital improvements  
25 to the Common Areas, except that the cost of repaving the parking areas of the Shopping  
26 Center may be included within Common Areas Charges so long as such cost is amortized  
27 on a straight-line basis over the useful life thereof under generally accepted accounting  
28 principles (or successor accounting standards), and is not incurred (A) prior to the  
29 expiration of the fifth (5th) full calendar year of the Term, or (B) more than once during  
30 each five (5) full calendar years of the Term; (3) the cost of investigating, monitoring or  
31 remedying any environmental condition or "Hazardous Substances" or any other  
32 "Compliance Costs" (both as hereinafter defined in Subsection 12.4.1); (4) any debt  
33 service (including principal and interest) or payments of any judgments or other liens  
34 against Landlord; (5) the cost of maintaining, repairing or providing security for interior  
35 portions of buildings; (6) Taxes or other taxes levied or assessed against Landlord or the  
36 Greater Shopping Center; (7) the cost of compliance with applicable Legal Requirements  
37 (including, without limitation, the cost of curing violations or contesting such Legal  
38 Requirements); (8) any costs resulting from insurance deductibles or any payments made  
39 under any self-insurance policy maintained by Landlord; (9) any costs which would have  
40 been reimbursed or paid for by insurance proceeds had Landlord maintained the  
41 insurance required under Section 10.3 hereof and the amount of any judgment or other  
42 charge entered or costs assessed against Landlord in excess of the policy limits of the  
43 insurance maintained by Landlord under Section 10.3 hereof; (10) those portions of  
44 Landlord's insurance premiums which are reimbursed to Landlord by any other tenant in  
45 the Shopping Center other than through the payment of such tenant's proportionate share  
46 of insurance premiums otherwise includable as part of Common Areas Charges; (11)  
47 sums paid or owed by Landlord to any tenant in the Shopping Center; (12) costs incurred  
48 in connection with the negotiation of leases with, or construction of improvements for,  
49 any tenant in the Shopping Center (including, without limitation, brokerage commissions  
50 and legal fees); (13) costs incurred in connection with lawsuits or other legal actions  
51 (including, without limitation, arbitrations and mediations) instituted or defended by  
52 Landlord; (14) sums incurred as late payment fees, penalties or interest; (15) ground rent;  
53 (16) depreciation [except as expressly permitted pursuant to item 23 below]; (17) costs  
54 disproportionately incurred by or on behalf of any one or more of the tenants in the  
55 Shopping Center (including, without limitation, all costs relating to the operation of any

1 food court or exterior dining area in the Shopping Center); (18) electricity costs for  
2 lighting Common Areas later than the "Normal Hours" [hereinafter defined in Section  
3 5.2], other than low-level security lighting; (19) Landlord's advertising, entertainment  
4 and promotional costs for the Greater Shopping Center (including, without limitation,  
5 holiday decorations); (20) costs of acquiring, leasing, restoring, insuring or displaying  
6 sculptures, paintings and other objects of art located within or outside the Shopping  
7 Center; (21) costs and expenses payable to Landlord or its Affiliate, to the extent that  
8 such costs and expenses exceed competitive costs and expenses for materials and services  
9 by unrelated persons or entities of similar skill and experience; (22) repairs resulting from  
10 defects in the original construction of the Greater Shopping Center arising within one (1)  
11 year after the Rent Commencement Date; (23) the cost of mechanized equipment for the  
12 maintenance of the Common Areas (but not the straight-line depreciation thereof over its  
13 useful life, as determined in accordance with generally accepted accounting principles (or  
14 successor accounting standards)); (24) reserves for anticipated future expenses; (25) any  
15 cost or expense relating to the administration and management of the Common Areas  
16 (whether on-site or off-site) including, but not limited to, overhead, management fees,  
17 office salaries and benefits, office rental, office supplies, dues and subscriptions, office  
18 utility charges, telephone charges and automobile expenses; (26) costs incurred in  
19 connection with the monitoring, maintenance, inspection, or testing of fire alarm systems;  
20 (27) costs and expenses payable to Landlord, or its Affiliate or designee, for the provision  
21 of utility service(s) to the Common Areas, to the extent that such costs and expenses  
22 exceed competitive market rates; (28) except as specifically provided in Section 7.2  
23 hereof, any costs relating to any pylon signs or other signage identifying tenants of the  
24 Greater Shopping Center; or (29) any costs incurred by Landlord to operate, maintain,  
25 insure and repair the Common Areas located within any portion of the Greater Shopping  
26 Center other than the Shopping Center (other than the Shopping Center's share of costs to  
27 maintain the Road Parcel and certain improvements serving the entire Greater Shopping  
28 Center pursuant to the OEA).

29 (b) In addition, if any tenant or other occupant of the Shopping  
30 Center (i) maintains the Common Areas in whole or in part, or any facilities therein,  
31 (ii) provides any services the cost of which would otherwise be includable in Common  
32 Areas Charges, and/or (iii) pays directly for costs which would otherwise be included in  
33 the Common Areas Charges, then the costs associated with or attributable to any of the  
34 foregoing shall be excluded from Common Areas Charges, and the denominator used to  
35 determine Tenant's Pro Rata Share of such costs (and only such costs) shall be reduced  
36 by the Floor Area occupied by such tenant or other occupant. In applying the provisions  
37 hereof, Landlord shall act equitably, taking into account, for example, the relationship of  
38 the size of the Common Areas maintained by the other tenant or occupant to the size of  
39 its premises.

40 (c) Common Areas Charges for any period during the Term  
41 which constitutes less than a full calendar year shall be equitably prorated.

42 5.1.4 Tenant's Right to Audit. Tenant shall have the right, within three (3)  
43 years after receiving any CAC Reconciliation Statement (and not more than once  
44 annually) to audit Landlord's books and records to verify Landlord's calculation of  
45 Common Areas Charges as reflected therein and Tenant's Pro Rata Share thereof. Upon  
46 Tenant's request, Landlord shall promptly deliver to Tenant copies of relevant backup  
47 materials (including, but not limited to, contracts, correspondence and paid invoices)  
48 reasonably required by Tenant. In the event of an error in Landlord's favor, Landlord  
49 shall refund the overcharge to Tenant within thirty (30) days after Tenant's demand  
50 therefor, and if the overcharge exceeds five (5%) percent of Tenant's Pro Rata Share of  
51 Common Areas Charges, Landlord shall pay to Tenant the reasonable expenses of the  
52 audit within thirty (30) days after Tenant's demand therefor, failing which, Tenant shall  
53 have the right (in addition to any rights and remedies to which it may be entitled under  
54 this Lease, at law, or in equity) to offset such amount from payments of Rent next

1 becoming due hereunder, together with interest thereon at the Lease Interest Rate from  
2 the date such remittance is due until reimbursement or full satisfaction by credit.  
3 Landlord shall maintain all books and records pertaining to a calendar year for at least  
4 three (3) years after it delivers to Tenant a CAC Reconciliation Statement for such  
5 calendar year. Tenant shall keep the results of any such audit confidential, provided that  
6 nothing contained herein shall restrict Tenant from disclosing such information as may be  
7 required by applicable Legal Requirements, or to its accountants, attorneys or *bona fide*  
8 prospective assignees or subtenants (provided that each of such recipients shall be bound  
9 by the same non-disclosure provisions as are imposed upon Tenant). Any dispute by  
10 Landlord with respect to an audit by Tenant shall be submitted to arbitration in  
11 accordance with the provisions of Section 16.3 below.

12 5.1.5 In no event shall Tenant be required to join, participate in or  
13 contribute to any promotional fund, marketing fund or merchants' association.

14 Section 5.2 Common Areas: Restrictions.

15 5.2.1 Continuous Access. No entrances, exits, approaches and means of  
16 ingress and egress to, from, and/or within the Road Parcel, the Shopping Center or the  
17 Premises as shown on Exhibit B hereto shall be interrupted or disturbed by any act or  
18 omission of Landlord or any third party during the Term, except: (i) in the event of an  
19 emergency or as may be otherwise required by applicable Legal Requirements, in which  
20 event Landlord shall use reasonable efforts to give Tenant advance notice of same and to  
21 minimize interference to Tenant's normal business operations in the Premises as a result  
22 thereof; or (ii) in the event that Landlord is required to temporarily close the Common  
23 Areas within the Shopping Center, for the minimum time legally necessary to prevent a  
24 dedication thereof or an accrual of any rights in any person or the public generally  
25 therein; provided that such closure shall not occur during August (through Labor Day),  
26 November or December of any calendar year, and Landlord shall give Tenant at least  
27 thirty (30) days' prior notice thereof.

28 5.2.2 No Alterations. Landlord shall not, without obtaining Tenant's prior  
29 written consent in each instance, which consent may be withheld in its sole discretion:  
30 (i) alter (except in de minimis ways) the area of the Shopping Center or the location,  
31 availability, or size of any Common Area improvement located within the Critical Area,  
32 from that shown on Exhibit B hereto; (ii) construct or permit to be constructed any  
33 structures within the Critical Area (including, without limitation, any buildings, kiosks,  
34 booths, signs or similar structures within the Critical Area), other than as shown on  
35 Exhibit B hereto; or (iii) materially change the entrances or exits to and from the Road  
36 Parcel, the Shopping Center, or the curb cuts, roadways, drive aisles, sidewalks or other  
37 elements of the Common Areas within the Critical Area or the Road Parcel, or the  
38 number, location or layout of parking spaces, located within the Critical Area from those  
39 shown on Exhibit B hereto. Except in the event of an emergency, and except for minor  
40 repairs necessary to maintain the free flow of vehicular traffic, Landlord shall neither  
41 perform nor permit to be performed, any construction, repairs, replacements or  
42 maintenance to any portion of the Road Parcel or the Critical Area (other than emergency  
43 repairs to utilities and Common Areas) during the months of August (through Labor Day),  
44 November or December of any year, without the prior consent of Tenant, which consent  
45 may be withheld in Tenant's sole discretion. Tenant hereby acknowledges that Landlord  
46 intends to dedicate the Road Parcel to the City of Fayetteville. In the event such  
47 dedication takes place, any restrictions or requirements in this Lease related to the Road  
48 Parcel, including but not limited to the restrictions prohibiting repairs, replacements or  
49 maintenance of the Road Parcel during the months of August (through Labor Day),  
50 November or December of any year, shall no longer be applicable.

51 5.2.3 Outparcels. In addition to the provisions of Subsection 5.2.2 above,  
52 during the Term, the following restrictions shall encumber and bind the outparcels



(collectively, the “*Outparcels*” and individually, an “*Outparcel*”) designated on Exhibit B hereto as “Building III-K”, “Building III-L”, and “Building III-M”: (a) the entrances to Building III-L and Building III-M shall not face the Premises, but shall be located on the side of said buildings that is opposite to the center drive aisle or the side of said buildings facing the Road Parcel, (b) no building shall exceed one story in height; (c) no building shall exceed a maximum height of twenty-four feet (24’) as measured from the finished floor level to the highest point on such building or structure (inclusive of the height of all types of projections or architectural treatments or embellishments thereon, such as, but without limitation, HVAC equipment, parapets, mansards, signs, satellite dishes, and antennae), provided, however, that architectural elements on no more than two (2) sides of the subject building may be higher than twenty-four (24) feet (but less than twenty-eight (28) feet) so long as the architectural elements on a building which are higher than twenty-four (24) feet in height do not exceed twenty percent (20%) of the total aggregate footage (measured in lineal feet) of the perimeter of the building in question; and (d) the Floor Area of any building constructed on an Outparcel shall not exceed the Floor Area established therefor on Exhibit B hereto. For purposes of this Subsection 5.2.3, the Floor Area of any building constructed on an Outparcel shall also be deemed to include outdoor balconies, patios or other outdoor areas utilized for retail sales or food or beverage service (exclusive of drive through or walk-up take-out food or beverage service).

5.2.4 Parking Area; Customer Pick Up Area. During the Term, Landlord shall maintain in the Shopping Center, at a minimum, the greater of (i) the number of parking spaces required by applicable Legal Requirements, without variance, or (ii) the number of ground-level parking spaces shown on Exhibit B hereto, with each such space being at least nine (9) feet in width and eighteen (18) feet in length. Parking spaces shall at all times be clearly marked by painting, striping or otherwise. Landlord shall maintain in the location identified on Exhibit B as the “Expectant Mother Parking Area”, a minimum of six (6) parking spaces reserved for the exclusive use of expectant mothers and/or parents with infants who are customers of Tenant (the “*Expectant Mother Parking Spaces*”). The Expectant Mother Parking Spaces shall be prominently marked and/or signed as reserved for expectant mothers and/or parents with infants who are customers of Tenant. Except for the Expectant Mother Parking Spaces, the “Cost Plus Reserved Spaces” shown on Exhibit B, the “Carter’s Stroller Spaces” shown on Exhibit B, the “Sprouts Special Events Area” shown on Exhibit B, the “Sprouts Temporary Tent Area” shown on Exhibit B, the “PetCo Disposal Facility Area” shown on Exhibit B, and up to sixteen (16) total “pick up” spaces adjacent to Building III-K, Building III-L, Building III-M and/or Building III-O, Landlord shall not designate specific parking spaces for use by other tenants or occupants of the Shopping Center, nor shall Landlord permit any person or entity to use the parking areas other than Tenant, the other tenants and occupants of the Greater Shopping Center, and their employees, agents, subtenants, concessionaires, licensees, customers, and invitees. Landlord shall use commercially reasonable and diligent efforts to enforce the foregoing restrictions. There shall be no charge whatsoever levied for the use of any parking areas within the Greater Shopping Center. Landlord shall not permit overnight parking in the Shopping Center.

5.2.5 Lighting. Throughout the Term, Landlord shall keep the Road Parcel and the Common Areas within the Shopping Center fully lighted and open to the customers of the Shopping Center seven (7) days a week from dusk until 11:00 p.m. Monday through Saturday and until 7:00 p.m. on Sunday (“*Normal Hours*”). Upon request of Tenant, Landlord shall keep the Common Areas within the Shopping Center lighted for as long after Normal Hours as Tenant shall request, provided Tenant shall pay for a share of the reasonable cost of said requested lighting, which share shall be equal to the product of (x) such cost, and (y) a fraction, the numerator of which shall be the number of square feet of Floor Area within the Premises and the denominator of which shall be the aggregate number of square feet of Floor Area of all premises within the Shopping Center (including the Premises) open later than Normal Hours (excluding, however, those tenants and occupants who separately control and pay for their own

1 Common Area lighting). In addition to the foregoing, Landlord shall provide for low  
2 level security lighting from one (1) hour after the close of business in the Premises until  
3 dawn.

4 5.2.6 Repairs. During the Term, any construction or repair by Landlord  
5 permitted or required under this Lease and undertaken in the Road Parcel, the Common  
6 Areas within the Shopping Center or in any other portion of the Shopping Center shall:

7 (a) not be performed during the months of August (through Labor  
8 Day), November or December of any year, except in the event of an emergency, except  
9 for minor repairs necessary to maintain the flow of vehicular traffic, or except as may be  
10 otherwise required by applicable Legal Requirements;

11 (b) be commenced only upon at least five (5) days' prior notice to  
12 Tenant (except in an emergency, in which event Landlord shall only be required to give  
13 such notice as is reasonable under the circumstances); and

14 (c) be performed in accordance with the requirements of  
15 Subsection 3.3.6 above and in such a manner so as not to materially interfere with the  
16 normal conduct of any business operations in the Premises.

17 5.2.7 Rules and Regulations. Tenant shall comply with the rules and  
18 regulations of the Shopping Center as established from time to time by Landlord, within  
19 sixty (60) days after Landlord notifies Tenant thereof, provided they: (i) are reasonable,  
20 (ii) do not adversely affect the normal conduct of any business operations in the  
21 Premises, (iii) do not adversely affect any of Tenant's rights under this Lease, and (iv) are  
22 uniformly enforced against all tenants of the Shopping Center and without prejudice  
23 against Tenant. In the event of any conflict between the provisions of this Lease and any  
24 rules or regulations, the provisions of this Lease shall prevail and govern.

25 5.2.8 Miscellaneous.

26 (a) No Promotional Use. Except as permitted pursuant to the  
27 OEA, Landlord shall not use or permit the use of all or any portion of the Common Areas  
28 within the Shopping Center for retail sales or for promotional purposes.  
29 Notwithstanding the foregoing provision, (i) tenants of the Shopping Center (including  
30 Tenant) shall be permitted to display seasonal merchandise and conduct sidewalk sales  
31 in front of their respective stores only, provided that such sales shall: (A) be conducted in  
32 a manner consistent with sidewalk sales in comparable shopping centers in the state in  
33 which the Shopping Center is located, (B) not materially interfere with normal pedestrian  
34 access over the sidewalks, and (C) not materially interfere with the normal business  
35 operations of Tenant in the Premises or materially impair the visibility of Tenant's  
36 signage and (ii) Sprouts, as the tenant of Building III-H as shown on Exhibit B, shall be  
37 permitted to use the Sprouts Temporary Tent Area as shown on Exhibit B for up to two  
38 weeks upon opening for business in Building III-H to accommodate a temporary tent  
39 where Sprouts can perform nutrition classes during Sprouts grand opening and (iii)  
40 Sprouts, as the tenant of Building III-H as shown on Exhibit B, shall be permitted to use  
41 the Sprouts Special Events Area as shown on Exhibit B for special events (e.g., grand  
42 opening, job fair or anniversary celebration) ("Sprouts Special Events"); provided,  
43 however, no such Sprouts Special Events shall be permitted which impedes any  
44 loading/drop off areas, fire-lanes, "no parking" areas, or ingress/egress generally within  
45 the Shopping Center, and provided further that such Sprouts Special Events shall not  
46 exceed four (4) consecutive days in duration and shall occur no more than eight (8) times  
47 in any calendar year. Landlord shall not permit any solicitation, distribution of handbills,  
48 picketing, or other public demonstration in the Common Areas, except as otherwise may  
49 be mandated by applicable Legal Requirements.

(b) Trash Compactor and Containers. Tenant shall be permitted to maintain and operate, at no extra charge: (i) a trash compactor in the portion of the Common Areas designated on Exhibit B hereto as "Trash Compactor Pad"; and (ii) a trash container(s) in the portion(s) of the Common Areas designated on Exhibit B hereto as "Trash Container Pad". Tenant, at its sole cost and expense, shall keep the trash compactor and containers neat and clean and repair any damage caused by use and storage of such compactor and containers.

(c) Shopping Carts. Tenant shall be permitted to store its shopping carts in such exterior cart corrals as may be reflected on Exhibits B and D-1 hereto. With respect to shopping carts provided by Tenant for the use of its customers, Tenant will use reasonable efforts to periodically remove same from the Common Areas. No more than two (2) parking spaces may be utilized for Tenant cart corrals.

(d) Cellular Towers. No transmission and/or reception towers for wireless telephone or internet communications shall be permitted within the Shopping Center.

(e) Temporary Storage Containers. Tenant shall be permitted to maintain temporary storage containers or trailers in the locations designated on Exhibit B hereto during the Term, subject to applicable Legal Requirements. Tenant acknowledges and agrees that the temporary storage container or trailer shall (i) not interfere with ingress or egress to the Shopping Center or deliveries to other tenants in the Shopping Center, and (ii) be limited to two (2) times during each calendar year during the Term and for a duration not to exceed six (6) weeks during each such period.

## ARTICLE 6 UTILITIES

Section 6.1 Utility Service. From and after the Delivery Date, and continuing thereafter through the end of the Term, Tenant shall be solely responsible for and shall pay the cost of utilities services (including, without limitation, electricity, gas, water, sanitary sewer, alarm and telecommunications) consumed in the Premises by Tenant. Tenant shall not be obligated to purchase utility service(s) directly from Landlord, or from any utility provider designated by Landlord. Landlord shall provide separate utility meters exclusively serving the Premises, at its sole cost and expense (including, without limitation, all connection and hook-up fees). Tenant's entry upon the Premises prior to the Delivery Date shall not constitute a waiver by Tenant of Landlord's obligation to pay the costs of all utility charges incurred in the Premises prior to such date. Landlord shall not permit the capacity of utility lines available for use at the Premises to be reduced or overloaded by any other persons or entities. Landlord shall permit Tenant and its telecommunications provider full and free access to, and use of, available telecommunications conduits in the Shopping Center for the provision of telecommunications service to the Premises, subject to such reasonable requirements as Landlord may impose.

Section 6.2 Interruption. Notwithstanding any provision of this Lease to the contrary, in the event utilities serving the Premises are disrupted due to the acts or omissions of Landlord, its agents, contractors, servants or employees, Landlord shall promptly restore the affected utilities at Landlord's sole cost and expense. If the disrupted utilities are not restored within twenty-four (24) hours after the Landlord has knowledge of the disruption, and Tenant is unable to conduct its normal business in the Premises as a result thereof, Rent shall be equitably abated during the period of disruption.